

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6202

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ENOS A. WILKERSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Richard L. Williams, Senior District Judge. (3:01-cr-355-RLW; 3:04-cv-00212-RLW)

Submitted: June 15, 2006

Decided: June 20, 2006

Before KING, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Enos A. Wilkerson, Appellant Pro Se. Peter Sinclair Duffey, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Enos A. Wilkerson seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2000) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). We have independently reviewed the record and conclude that Wilkerson has not made the requisite showing.* Accordingly, we deny Wilkerson's motion for appointment of counsel, deny a certificate of appealability, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately

*We decline to consider Wilkerson's claims asserted for the first time in this appeal. Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993). To the extent Wilkerson preserved his claim of error under United States v. Booker, 543 U.S. 220 (2005), by including it in a motion to amend below, he is not entitled to relief because we have held that Booker is not retroactively applicable to cases on collateral review. United States v. Morris, 429 F.3d 65, 72 (4th Cir. 2005).

presented in the materials before the court and argument would not aid the decisional process.

DISMISSED